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NOTES.

STATE LAWS IN FEDERAL COURTS OF EQUITY.—The supremacy of federal over State jurisprudence seems to have been extended by a recent case in the Circuit Court of Appeals. *James* v. *Gray* (1904) 131 Fed. 401. By the Massachusetts Enabling Acts a married woman may contract with reference to her separate estate as if sole, but, in the words of the statute, "she shall not be authorized hereby to make contracts with her husband." Conceding that under the Massachusetts decisions on this statute a contract between a married woman and her husband with reference to her separate estate could not be enforced in equity, the federal court finds that under the rules of general equity jurisprudence such a contract could be enforced, and it holds that these rules must govern in a federal court, notwithstanding the Massachusetts adjudications.

When our federal judiciary was created the circuit courts were given the powers of the courts of Kings Bench and of Chancery in England at the time the Constitution was adopted, and in trials at common law the laws of the several States were made rules of decision by the creating statute, except in cases where they would not apply or were in conflict with the Constitution, treaties or statutes of the United States. 1 U. S. Rev. Stat. § 721. State statutes affecting equity in its concurrent jurisdiction were early held to have no effect on the federal courts, *Robinson* v. *Campbell* (1818) 3 Wheat. 212, and the proposition that remedies and procedure in these courts cannot be controlled by State laws has been frequently affirmed in subsequent cases. *Kirby* v. *Railroad* (1886) 120 U. S. 130. In many of these cases, though the decisions were on questions of remedy, the language has been broad enough to indicate freedom from control in the original jurisdiction of federal equity courts as well; *U. S.* v. *Howland* (1819) 4 Wheat. 108, 115; *Brine* v. *Insurance Co.* (1877) 96 U. S. 627, but, in *Meade* v. *Beale* (1850) Taney 393, it was

held that recognition of a right in the jurisprudence of a State was essential to its enforcement in a federal court of equity, even though the position of the courts in that State was opposed to that maintained under the rules of general equity jurisprudence; and this distinction has had a determining influence in subsequent decisions. *Fleitas* v. *Richardson* (1892) 147 U. S. 550; In re *Talbot* (1901) 110 Fed. 924. The prevailing judges in the principal case seem to feel that their decision is not altogether incompatible with this distinction, but that, as a married woman's separate estate is regarded by the Massachusetts courts as a proper subject of equity jurisdiction, the refusal of those courts, though based upon the words of the statute above quoted, to protect it in such a case as that under consideration, is to be considered as being in the nature of the denial of a remedy. But, apart from this, they declare that it remains for the federal courts not only to occupy the field of equitable rights according to their own rules, but also to determine what are the boundaries of that field. Admitting this to be so, it may be said that the federal courts are extending rather than occupying the field of their jurisdiction, when they set aside State rules in matters which are essentially local and in respect of which the federal courts are held to be bound by the State adjudications. *Lippincott* v. *Mitchell* (1876) 94 U. S. 767; *Allen* v. *Massey* (1872) 17 Wall. 351. The decisions in these cases related to questions of real and personal property, but such questions are hardly more local in their nature than the public policy of the State with reference to marriage and to the property rights which prevail between husband and wife; and it has been held to be the privilege of the State to determine its own rules of policy on those subjects. See *Meister* v. *Moore* (1877) 96 U. S. 76; *Maynard* v. *Hill* (1887) 125 U. S. 190. This privilege would seem to be encroached upon by the result reached in the principal case.

New Trials after Verdicts of Acquittal.—It is a fundamental principle of the common law that no one can be placed twice in jeopardy for the same offence and in a slightly modified form this principle has been incorporated into our national Constitution. 5th Amend. U. S. Const. At one time it was vigorously insisted that the principle should be made to apply not only to appeals by the State after an acquittal, but to the defendant after a conviction, and that the right of appeal in each case should be denied. *U. S.* v. *Gilbert* (1834) 2 Sumn. 19. The later and more general view permits the defendant, under proper conditions, to secure a new trial after conviction, *U. S.* v. *Keen* (1839) 1 McLean 429, but still withholds from the State the right to secure a new trial after a proper acquittal. 1 Bish. Crim. Law §§ 979, 992. The principle in its various applications governs not only felonies but misdemeanors and qui tam actions for penalties. *State* v. *Solomons* (1834) 27 Am. Dec. 469 and note. All returns of not guilty by a jury, however, are not acquittals within the rule which prohibits an appeal by the State. 1 Chitty Crim. Law *657. In qui tam actions for penalties the plaintiff may, after acquittal, have a new trial because of a misdirection by the judge as to the law, or because